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April 4, 2011

**BY ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: *Petition for Declaratory Ruling Asking To Clarify the Scope of Section 337  
Regarding Use by State or Local Government Entities of the 700 MHz  
Public Safety Broadband Spectrum, PS Docket No. 06-229*

Dear Secretary Dortch:

In response to the Public Safety and Homeland Security Bureau's call for public comments in this docket,<sup>1</sup> the City of McAllen, Texas, files this letter in support of the reading of the Communications Act and Commission rules advanced by the City of Charlotte, North Carolina.<sup>2</sup> The Commission should confirm that entities eligible to hold authorizations in the 700 MHz public safety frequency bands under 47 C.F.R. § 90.523 may use this spectrum for activities beyond police, fire, and medical purposes.

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<sup>1</sup> Public Notice, *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling Asking To Clarify the Scope of Section 337 Regarding Use by State or Local Government Entities for the 700 MHz Public Safety Broadband Spectrum*, DA 11-537 (Mar. 22, 2011).

<sup>2</sup> *Request for Declaratory Ruling*, PS Docket No. 06-229 (Mar. 7, 2011) ("Petition").

As Charlotte's Petition explains, allowing the sharing of 700 MHz broadband systems among local government personnel honors and furthers the Communications Act and the Commission's rules. The Communications Act directs the Commission to allocate this spectrum for "public safety services."<sup>3</sup> These are services "(A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided--(i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider."<sup>4</sup> To "implement" this definition, the Commission has correctly found that "[a]ny territory, possession, state, city, county, town, or similar State or local governmental entity is eligible to hold authorizations in the 764-776 MHz and 794-806 MHz frequency bands."<sup>5</sup> This implementation reflects the fact that these State and local governmental entities protect the safety of life, health, or property in a myriad of ways, such that this purpose at least amounts to one that is "principal."

This view is consistent with Commission precedent. The Commission has recognized that the statute's "public safety services" definition is "flexibl[e]," and that—because the statute does not require the spectrum to be used for the "sole" purpose of protecting the safety of life, health, or property—licensees can engage in "other uses of the spectrum."<sup>6</sup> As Charlotte also notes, the Commission has issued narrowband 700 MHz authorizations to transit districts and airports authorities.<sup>7</sup>

This sensible reading—that 700 MHz use need not be confined to police, fire, and medical functions—also furthers important policy goals. As Charlotte notes, if a local government could not use a 700 MHz system more broadly, many

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<sup>3</sup> 47 U.S.C. § 337(a).

<sup>4</sup> 47 U.S.C. § 337(f)(1).

<sup>5</sup> 47 C.F.R. § 90.523.

<sup>6</sup> *In re Serv. Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd. 15289, 15439 (2007).

<sup>7</sup> Petition at 7.

jurisdictions would not be able to finance the building of a broadband public safety network at all.<sup>8</sup> This would also promote wasteful duplication.<sup>9</sup>

In fact, the City of McAllen currently uses an integrated "trunking" radio system to provide seamless, interoperable communication throughout the City. This is particularly useful in times of emergencies or natural disasters so that critical City agencies other than Police and Fire can communicate without interruption. For instance, the City of McAllen is in an area of the country which is often impacted by tropical weather, including hurricanes. For that reason, departments such as Public Works, Traffic, Engineering, Emergency Management, etc. are often the "first responders" for these events. Those departments are certainly engaged in "public safety services" as contemplated by the definition mentioned above. This arrangement also greatly facilitates "interoperable" communications with neighboring jurisdictions and other agencies at other levels of government.

Accordingly, the City of McAllen urges the Commission to adopt Charlotte's position, and to clarify that 700 MHz spectrum may be shared by governmental personnel beyond those providing police, fire, and medical services.

Sincerely,



Kevin D. Pagan  
City Attorney

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<sup>8</sup> Petition at 10.

<sup>9</sup> *Id.*